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Massachusetts Cable Television Commission

CABLE BULLETIN

Number 94-1 May 16, 1994

Over the past several months, the Massachusetts Cable Television Commission (the "Commission") has been deeply involved in rate regulation resulting from the enactment of the Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") . In our continued effort to keep communities abreast of rate regulation activity, this Bulletin is dedicated to updating local officials, Cable Advisory Committees, and interested parties on the status, time lines and issues the Commission is pursuing in connection with rate regulation. In addition, this Bulletin will update you on the recently announced Federal Communications Commission (the "FCC") Order which, among other things, adopts changes to the initial benchmark formula.

Rate Regulation Activity

Since the last Cable Bulletin in October 1993, the Commission has:

- Adopted state rules and regulations for rate regulation which are consistent with state and federal law;
- Filed for, and subsequently received, FCC certification to regulate basic service and equipment rates for communities in Massachusetts;
- Notified 22 cable operators servicing 277 Massachusetts communities that they are subject to rate regulation;
- Collected and analyzed rate filings for those communities subject to rate regulation; and
- Conducted rate hearings, as required by state law, to determine maximum reasonable rates for basic service and associated equipment rates in communities subject to rate regulation.

Initiating Rate Regulations

In order to obtain certification from the FCC, the Commission was required to adopt rules consistent with the FCC's rate regulations. On July 27, 1993 the Commission issued its first Notice of Proposed Rulemaking regarding rate regulation. After holding a series of public hearings across the state to gather public input on the proposed rules, the Commission released its rate regulation rules on September 24, 1993. The Commission became certified to regulate basic tier and equipment rates on October 7, 1993, and subsequently began to notify cable operators, in communities where the local issuing authority requested that the Commission regulate rates, that they are subject to rate regulation. After further public hearings, the Commission adopted rate regulations concerning rate proceedings and establishing the Pilot Program, which were released on December 17, 1993.

Benchmark Versus Cost-Of-Service Review

Under the FCC's rules, cable operators have the option to file either a benchmark ("streamlined") review or present a cost-of-service showing, if it feels that the benchmark rate will not afford the company a reasonable return. Of the 308 Massachusetts communities that have franchised cable systems, 277 communities have requested that the Commission regulate rates. All but thirty-four of the Communities are benchmark rate reviews. The Commission determined that for this year it will first review benchmark filings and, subsequently, begin rate determinations for communities where the operator has elected to make a cost-of-service showing.

Round One Benchmark Reviews

The FCC's initial rules for determining benchmark rates were based on regulations drafted in the FCC's First, Second, and Third Reports and Orders on rate regulation which were released in 1993. As outlined in last October's Cable Bulletin Number 93-7, this process was designed to be implemented as follows:

> In implementing rate regulation in Massachusetts, the Commission will use a FCC-established benchmark to set a cable operator's initial maximum permitted per-channel rate for basic tier service in those communities which have requested rate regulation. If a cable operator's existing per-channel rate is at or below the benchmark rate on the date of initial regulation, it will be deemed reasonable; if the rate is above the benchmark rate, it will be presumed unreasonable and must be reduced unless justified by a cost-of-service showing. If a cable operator's per-channel rate is above the benchmark, it must be reduced either to the benchmark level or to a level which is 10% less than the operator's September 30, 1992 rate; whichever will yield a higher per-channel rate. Once the Commission has set an operator's initial per-channel rate, subsequent increases of this per-channel rate will be tied to inflation under a price cap mechanism.
>
> [T]he 1992 Cable Act ties charges for equipment to cable operators' actual cost (plus a reasonable profit) and requires them to "unbundle" equipment charges

from service charges. The Commission will use FCC Form 393 to set initial rates and unbundle equipment charges from programming charges.

The FCC's rate regulation process requires each cable operator to submit financial information and subscriber data in order to determine its basic service tier rate. To streamline this process, the FCC developed FCC Form 393, which must be completed by all cable operators submitting benchmark filings.

FCC Form 393 consists of three parts. Part I is the cover sheet where a cable operator summarizes information from Part II and III. Part II will enable each operator to determine its maximum permitted per-channel rate and to unbundle equipment charges from its programming charges. The cable operator will use Part III to establish equipment and installation rates.

Cable operators experienced some difficulty compiling the Form 393 due to the newness of the forms, cable operators' differing accounting practices, and the lack of explicit directions from the FCC. For these reasons, some issues concerning the Form 393 were left open to interpretation. In order to clarify these and other issues, the Commission has been in constant contact with the FCC. To date all parties -- the Commission, local governments, and cable operators -- have found that rate making under the FCC's regulations is an intricate, involved process.

Public Participation

According to state law, the Commission is required to hold a public hearing on each rate filing. In complying with this requirement, considerable effort was given to balancing the 1992 Cable Act's policy goal of minimizing administrative and procedural burdens with the Commission's goal of creating an open rate making process that is accessible to the public and formally involves issuing authorities in the proceeding. The Commission has undertaken its commitment to regulate rates for each community across the state, but out of practical necessity was forced to hold consolidated hearings in Boston. In order to incorporate additional local input into the rate making process, the Commission also conducted six regional public meetings on rate regulation.

The Commission scheduled pre-hearing conferences and public hearings for all cable operators that submitted benchmark filings. This hearing schedule, which began in mid-January and concluded in mid-March, was aggressive, yet necessary for the Commission to meet the time frames imposed on the process by the FCC rules.

In keeping with the goal of localism, the Commission established the issuing authority as a party in the rate regulation process. In addition, the Commission adopted regulation 207 CMR 6.36 establishing the Statement of Clarification as a vehicle by which an issuing authority may submit written comments on the cable operator's rate filing. This allows for a local government to participate in the rate regulation process even if it is unable to attend the public hearing. Thirty-one of the 277 filed a Statement of Clarification, which provided the

Commission with valuable information and became an important part of the record. The Commission will continue to seek and welcome comment on ways to enhance meaningful local participation as it continues implementation of cable rate regulation in Massachusetts.

Pilot Program

The Commission has further tried to achieve its commitment to local participation by establishing a Pilot Program allowing selected local governments to determine basic service and associated equipment rates. The Pilot Program is designed to provide the Commission and issuing authorities with a record that will assist it in determining the best way to proceed with rate regulation in those communities that wish to regulate rates at the local level in the future. The Cities of Boston, Holyoke, and Lowell and the Towns of Concord, Hopkinton, and Southbridge have been selected for enrollment in the Pilot Program. The Pilot Program officially began on April 1, 1994 and the Commission will update all local governments on any major Pilot Program events.

Recent Modifications To FCC Rate Regulation Rules

Some subscribers have seen their rates increase as a result of the FCC's initial rate regulations, which took effect last September. In response to these unanticipated increases, the FCC's economists made revisions to their rate model that may eventually result in a wide reduction in cable rates for all subscribers. On February 22, 1994, the FCC adopted further changes to its cable television rate regulation rules, which it expects to further reduce cable rates by 7%. While the actual impact of the FCC's action is not yet known, the following excerpts are taken from its February 22, 1994 statements:

> The [FCC's] revised rules will better ensure that consumers are offered regulated services at reasonable rates, and will provide incentives for cable operators to launch new program services and invest in advanced technology. The modified rate regulations will apply to regulated rates in effect on and after the effective date of the new rules; regulated rates in effect before that date will continue to be governed by the old benchmark system.
>
> The [FCC's] revised competitive differential is based on a strengthening of its statistical and economic model for estimating the difference between rates charged by non competitive systems and systems subject to "effective competition," as that term is defined in the 1992 Cable Act. The [FCC's] model is based on a survey of industry rates conducted by [FCC] staff in the winter of 1992. The competitive differential represents the [FCC's] best determination of the average amount by which the rates charged by a cable operator not subject to effective competition exceed "reasonable" rates.
>
> Under the revised approach for determining the competitive differential, the [FCC] computed, and considered, the competitive differential for each of the three types of systems deemed subject to effective competition. After analyzing the various

characteristics of the three types of effectively competitive systems, and exercising its expertise and discretion, the [FCC] determined that the best estimate of the average competitive differential is 17 percent.

The FCC's new Orders, Forms and regulations (released in late March) total approximately 500 pages. Copies of these documents are available from the Downtown Copy Center, 1990 M Street N.W., Suite 640, Washington D.C. 20036-3404, Telephone (202) 452-1422. This documentation is also on file at the Commission, if you wish to review it.

Notice of Emergency Regulation

The Commission adopted, on May 12, 1994, an emergency regulation which amends 207 CMR 6.43, Refunds. This is a technical amendment only. It changes the end of 6.43 (3)(a) from "shorter; or" to "shorter." This eliminates the "or" and changes the punctuation. The Commission will adopt this amendment as a permanent regulation pursuant to 207 CMR 2.06, after proper notice and hearing, within the next three months.

Other Matters

In previous mailings to issuing authorities, the Commission described changes in the law other than rate regulation, in which issuing authorities have an interest. These areas include home wiring and customer service standards. To date, thirty-three Massachusetts communities have incorporated all or parts of the FCC's customer service standards. Rather than incorporating standards into our state regulations, the Commission left consideration of these standards to local governments. Our belief is that issuing authorities are best able to determine community needs and then act on the standards accordingly. For those communities that have not reviewed the customer services standards presented in Cable Bulletin Number 93-1, the Commission strongly recommends that you review these provisions. Nevertheless, the Commission will continue to leave any determination of these matters to the issuing authority.

* * * *

We also want to mention that since joining the Commission last fall as Municipal Liaison, Frank Foss has worked with many of you and has made franchise renewal presentations to the communities of Hampden, Lexington, Clinton, Gloucester, Templeton, Swansea, Somerset, North Attleborough, Granby, Essex, Manchester, Southwick, Franklin, Marshfield, Carver, Plymouth, Kingston, Dracut, and Rockport. Please do not hesitate to call Frank, on his direct line (617) 727-6328, with any questions you have.

CHRONOLOGY OF RATE REGULATION RULES

Chronologically listed below are the FCC's and Commission's rate regulation rulemakings pertaining to the 1992 Cable Act.

Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-177, Adopted April 1, 1993, Released May 3, 1993.

- *FCC adopts initial rate regulation rules for the basic tier and associated equipment and cable programming tier.*

Notice of Proposed Rulemaking, Docket R-22, Released July 27, 1993.

- *Commission issues Notice of Proposed Rulemaking on Massachusetts' rate regulation.*

First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-428, Adopted and Released August 27, 1993.

- *FCC clarifies and expands on rate regulation rules adopted in its First Report and Order.*

Report and Order and Further Notice of Proposed Rulemaking, Docket R-22
Released September 24, 1993.

- *Commission adopts Massachusetts' rate regulation rules consistent with FCC regulations, and proposes procedural regulations and Pilot Program.*

Third Report and Order, MM Docket 92-266, FCC 93-519, Adopted November 23, 1993, Released November 24, 1994.

- *FCC requires same method of initial regulation (benchmark or cost-of-service) for both basic and cable programming services tiers.*

Second Report and Order, Docket R-22, Released December 17, 1993.

- *Commission adopts Massachusetts' procedural rules consistent with FCC regulations and rules governing implementation of Pilot Program.*

Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket 92-266, FCC 94-38, Adopted February 22, 1994, Released March 30, 1994

- *FCC adopts new rate regulation rules applicable to second round of benchmark rate reviews.*

Third Order on Reconsideration, MM Dockets 92-266 and 92-262, FCC 94-40, Adopted February 22, 1994, Released March 30, 1994.

- *FCC clarifies many rate regulation questions and amends certain rate regulation rules.*

Report and Order and Further Notice of Proposed Rulemaking, MM Docket 93-215, CS Docket 94-28, FCC 94-39, Adopted February 22, 1994, Released March 30, 1994.

- *FCC adopts interim cost-of-service regulations.*

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Massachusetts Cable Television Commission

NOTICE TO CABLE OPERATORS

Number 94-2 August 4, 1994

The following Notice serves as a reminder to cable operators regarding certain procedural and notification requirements mandated by new Federal Communications Commission's (the "FCC") regulations and by the Massachusetts Cable Television Commission (the "Commission"). The Commission requests that you carefully read this Notice and contact the Commission with any questions.

RATE REGULATION

Submission of Multiple Copies of FCC Forms

FCC regulations require cable operators to submit filings to support rates in effect on or after May 15, 1994. Operators who elected to take advantage of the refund deferral period must file the appropriate FCC forms with the Commission no later than August 15, 1994. In order to facilitate and expedite the processing of this rate information, the Commission is requesting that operators submit:

- One original and two copies of the appropriate FCC forms;
- One original and two copies of any supplemental information; and
- Where applicable, a computerized version of the completed FCC forms.

The Commission reminds operators that copies of the above referenced documents filed with the Commission must also be filed with the Issuing Authority.

Submission of Additional Information in Connection with Pending Cost-of-Service Filings

Operators with pending cost of service filings are required to provide additional information to the Commission similar in format to the FCC Form 1220. The Commission will review this information and apply general cost-of-service principles as required by the FCC's First Report and Order. The Commission will consider the filing of the FCC Form 1220 as an operator's good faith effort to provide the level of detail the Commission requires. However, the Commission reserves its right to request additional information where necessary as it proceeds with its rate review.

Refunds

Pursuant to Rate Orders issued by the Commission on May 20, 1994, cable operators are required to submit a detailed statement on refunds, including the amount of refunds by category issued to subscribers, no later than August 15, 1994. Operators are subsequently directed to file a sworn statement of execution that such refunds were issued and a sample bill no later than the next full billing cycle following August 15, 1994. Copies of this information must also be sent to local issuing authorities.

The Commission will review operators' detailed statements and notify them in writing of any outstanding questions regarding the information presented. The Commission reserves their right to order further refund adjustments if it determines that refunds were not calculated properly.

SUBSCRIBER NOTICE

Changes in Rates or Programming

The Commission reminds all operators that, pursuant to Massachusetts regulations and FCC regulations released March 30, 1994, cable operators who change either their rates, charges and/or programming services must provide at least 30 days advance notice to subscribers, issuing authorities and the Commission before implementing any changes. Commission regulations further direct operators to include in their 30-day advance notification of programming and/or rate changes a listing of the old and new rate(s) or programming service(s). Notification to the Commission should include all relevant rate schedules, changes in channel line-ups, and a copy of the written notice sent to subscribers.

Operators that restructured rates to comply with the FCC's new rules adopted February 22, 1994, including those operators taking advantage of the refund deferral period, must follow both state and federal notification requirements.

Placement of Information on Subscribers' Bills

The FCC requires that the name, address and telephone number of the local franchising authority appear on subscribers' monthly bills. The Commission is aware of numerous instances where the name, address and telephone number of the local issuing authority and the Commission have been confused with that of the cable operator. This has resulted in misdirected telephone calls and in-person visits regarding billing questions, consumer complaints, and service requests that should, in the first instance, be handled by cable operators, instead of the Commission or the issuing authority.

In addition, because in many cases the Commission's mailing address appears more conspicuously on the bill than the operator's address, the Commission frequently receives misdirected correspondence and cable bill payments intended for the operator. To avoid any further confusion, the Commission requests that operators place their consumer services telephone number and billing address in a clear and conspicuous position on subscribers' monthly bills.

Publication of Hearing Notices

The Commission has also adopted the following policy which enables the Commission to verify that proper notice has been made before the commencement of a public hearing:

Three days prior to the hearing, the cable operator must supply the Commission with a sworn statement listing each affected community, the newspaper in which the notice appeared for the affected community, and the dates of publication, as well as the dates the notice was cablecast.

cc: Issuing Authorities

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Massachusetts Cable Television Commission

CABLE BULLETIN

Number 94-5 December 1, 1994

CABLE SYSTEM AND CONSUMER ELECTRONIC EQUIPMENT COMPATIBILITY REGULATIONS

Over the past several months, the Massachusetts Community Antenna Television Commission (the "Commission") has been deeply involved in cable rate regulation, yet important changes in the Federal Communications Commission's (the "FCC") cable regulations, other than rate regulation, have occurred. This Bulletin is dedicated to updating local officials, Cable Advisory Committee members and interested parties of recently adopted rules regarding cable system and consumer electronic equipment compatibility.

Overview

The FCC adopted regulations to ensure compatibility between cable systems and consumer equipment such as television sets, video cassette recorders "VCRs" and other similar devices in its First Report And Order, ET Docket 93-7, released May 4, 1994. With these rules, the FCC is implementing Congress' equipment compatibility initiative contained in Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") which adds a new Section 624A to the Communications Act of 1934.

The FCC rules will allow subscribers to purchase cable equipment offered by a variety of suppliers, including cable operators, in a competitive market. The intent of these rules is to open these markets to competitive equipment providers, and to provide incentives for product developers, manufacturers, and cable operators to introduce new cable related and cable compatible products. Also, this initiative responds to long standing consumer demands for equipment compatibility: to ensure that consumer electronic equipment purchased, such as VCRs, advanced televisions with screen in screen capabilities, and advanced tuners, will work with their local cable systems.

Along with the new equipment compatibility rules, the FCC adopted consumer protection rules requiring cable operators to inform subscribers of equipment choices and compatibility in the marketplace. The FCC noted in its Report No. DC-2583, released on April 5, 1994, that competition could be stifled unless consumers are informed about their equipment options.

In Massachusetts, informing subscribers on equipment compatibility has been a part of the Commission's regulations for many years. In fact, many of the provisions recently adopted by the FCC rules have been part of the Commission's regulations for some time. For instance, the Commission's equipment requirement regulation, 207 CMR 10.03(1)(a), requires a cable operator to "describe the function of operator-supplied equipment and its interaction with consumer-owned equipment, including but not limited to remote control units, A/B switches, converters, parental control devices and video cassette recorders."

The FCC regulations reflect Congress' views on promoting innovation and competition. The FCC expects increased investment in new technological development and increased economic activity as subscribers are able to purchase competitively priced equipment.

Equipment Compatibility Rules

The new rules for improving compatibility between existing cable systems and consumer electronic equipment manufacturers include provisions which take effect immediately and others which will be phased in over time. Cable Operators are required to:

1.) Refrain from scrambling program signals carried on the basic service tier, however, the rule includes specific provisions for waivers (effective July 31, 1994);

2.) Offer subscribers additional equipment to enable them to use the special features and functions of their television equipment with cable service and provide subscribers the option of having simultaneous access to all signals that do not need to be processed by a converter or descrambler;

3.) Allow converter or descrambler devices that incorporate remote control capability to be operated with subscriber-owned remote controls or, at a minimum, take no action that would prevent the use of a subscriber-owned remote control unit; and

4.) Provide a consumer education program to inform subscribers of potential compatibility problems and methods for resolving such problems and notifying consumers that remote controls and supplemental equipment compatible with converters or descramblers used by cable systems are available from third-party vendors.

Future Considerations

The FCC stated that it intends to consider whether or not to prohibit the scrambling of all signals carried on regulated tiers of service, along with other outstanding issues. This would prohibit scrambling of the cable programming service tier as well as the basic service tier signals. It requested comments in its Further Notice of Proposed Rulemaking.

The compatibility rules also define technical standards for consumer television equipment that is labeled "cable ready". The rules require that consumer television equipment which does not comply with the technical standards carry an advisory stating that the product does not fully comply with the FCC's requirements for cable ready equipment.

The FCC will seek further discussion on increasing effective compatibility of consumer television equipment by using a standard interface connector or "Decoder Interface" for "cable ready" equipment. Also, the FCC is accepting comments on other associated component descrambler/decoder devices which may be provided by cable operators. These or other similar devices may eliminate the need for converters and descramblers.

The FCC also delayed action regarding digital cable standards due to anticipated development of technology in the cable industry. The FCC will monitor progress by the cable industry and will initiate a separate action on these issues as necessary to assure continuing compatibility in the future.

Effective Dates for Compatibility Requirements

July 31, 1994

- Cable operators may not scramble signals on the basic service tier. However, operators are allowed to file for a waiver.

October 31, 1994

- Cable operators are prohibited from altering the infrared codes used to operate converters by remote control.

- Cable operators using converters must offer subscribers additional equipment to allow simultaneous reception of multiple signals. The cable operator may charge the subscriber for this additional equipment.

- Cable operators must begin educating subscribers about equipment compatibility. Consumer information must be provided to subscribers at the time they first subscribe and a least once a year thereafter.

- Cable operators must advise subscribers that compatible remote control devices can be obtained from sources other than the operator.

- TVs and VCRs manufactured or sold in the United States cannot be called "cable ready" unless they comply fully with FCC's new requirements.

May 30, 1995

- New or re-built cable systems must comply with EIA IS-132 channel plan.

October 31, 1995

- Cable operators must offer as supplemental equipment designed to achieve compatibility, terminal devices with multiple tuners.

June 30, 1997

- TVs and VCRs that are not in full compliance with the FCC's cable ready receiver standards must be labeled.

- All TVs and VCRs marketed in the United States as cable ready or cable compatible must comply with new technical performance standards.

- Other technical requirements:

  Additional isolation requirement for cable system terminal devices or TV interface devices of 55 Db between 550 MHz and 806 MHz.

  Additional isolation requirement for A/B switches for 55 Db between 550 MHz and 806 MHz.

  Attenuation limits for RF by-pass switches - 6 Db from 54 MHz to 550 MHz; 8 Db from 550 MHz to 806 MHz.

  Required isolation between the antenna and cable input terminals for TVs equipped with cable input selector switch - 80 Db from 54 MHz to 216 MHz; 60 Db from 216 MHz to 550 MHz; 55 Db from 550 MHz to 806 MHz.

  All cable systems must comply with EIA IS-132 channel plan.

Undoubtedly the dynamic landscape of the telecommunications industry both from a regulatory and a technical prospective will continue to change. The Commission will continue to keep municipal officials informed as these changes develop and unfold.

MASS. CA22.3.94-6

Massachusetts Cable Television Commission

CABLE BULLETIN

Number 94-6 December 30, 1994

BASIC SERVICE RATE INCREASE FILINGS

The Massachusetts Community Antenna Television Commission (the "Commission") has recently received Federal Communications Commission ("FCC") Forms 1210 and 1205 from several cable operators. In this Cable Bulletin, the Commission will outline the filing process for rate increases, subscriber notification requirements and the Commission's role in reviewing rate increase requests.

Background

Under the Cable Television Consumer Protection and Competition Act of 1992, the FCC established two methods for regulating rates: benchmark and cost-of-service. The benchmark is the primary method for regulating rates, while the more intensive cost-of-service review is an option for cable operators who believe that the benchmark methodology does not allow them a fair rate of return on their investment. The Commission, designated as the rate regulating authority in Massachusetts, is currently in the process of setting the initial basic service and equipment rates for both benchmark and cost-of-service filings.

Once the Commission sets the initial rates for basic service and associated equipment, cable operators are allowed to adjust rates annually by the rate of inflation and quarterly if there are any net changes in the cable operator's external costs. External costs refer to costs beyond the control of the cable operator. These costs include new retransmission consent fees after October 6, 1994, other programming cost increases, taxes, franchise fees and FCC regulatory fees.[1] Also included are costs of franchise requirements including costs of any public, educational or governmental access obligations.

A cable operator must file with the Commission and issuing authority, an FCC Form 1210 to adjust basic tier programming rates for inflation and external cost changes and an

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[1] Franchise and FCC regulatory fee increases are not subject to approval by this Commission prior to implementation. However, operators are still required to give a 30 day notice to the Commission, issuing authority and subscribers prior to implementation.

FCC Form 1205 to adjust equipment rates.[2] Annual inflation adjustments may be made between September 30th and August 31st of each year to adjust rates for inflationary changes occurring from June 30th of the previous year to June 30th of the year in which the inflation adjustment is being sought. A cable operator may seek to adjust basic service rates for changes in external costs that occurred during the previous calendar quarter as soon as the information needed to compute the appropriate adjustment is available. Cable operators may file for equipment rate increases to reflect cost increases at any time. However, an FCC Form 1205 must be filed annually with the Commission within 60 days after the end of the cable operator's fiscal year and if the FCC Form 1205 reflects a decrease in equipment costs, the Commission may order a rate roll back.

The Commission will issue a written decision regarding all rate increase requests. A copy of any written decision issued by the Commission will be sent to the cable operator and relevant issuing authority.

Filing for a Rate Increase

According to FCC and Commission rules, a cable operator must seek Commission approval before it can raise its basic service tier and associated equipment rates. The Commission has 30 days from the date of submission to review the rate increase request. If the Commission is unable to issue a decision within the 30 day period, it may issue an order extending this time period for an additional 90 days so that it may request and/or consider additional information from the operator, issuing authority or interested parties. If the Commission is unable to issue a decision by the 120th day, the operator may put the proposed rates into effect. In such instance, the Commission will issue an Accounting Order. This Order will require that an operator keep an account of subscribers who paid the increased rate. If the Commission subsequently finds the operator's rate increase to be unreasonable, it will order the operator to issue any refunds with interest to the affected subscribers.

Rate Increase Notice

Pursuant to Commission regulations 207 CMR 10.02(5) and 207 CMR 6.34(1), cable operators are required to give subscribers, issuing authorities and the Commission a thirty day written notice before implementing any rate increase. In order to protect subscribers' ability to make an informed buying decision and to avoid requiring cable operators to provide multiple written notices regarding a proposed basic tier rate increase, the Commission will adopt the following notice requirements. At the time the cable operator files an FCC Form 1205 and/or an FCC Form 1210 with the Commission, the cable operator may send a written notice of the proposed rate increase to subscribers, issuing authorities and the Commission. The following information must be included in the written notice:

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[2] Cable operators are reminded that these forms, as with all Commission filings, must be submitted with three hard copies and on IBM formatted 3.5" floppy disk.

1. The old rate and the proposed rate[3];

2. A brief, understandable explanation for the rate change[4];

3. A statement that the proposed rate is subject to Commission review; and

4. A statement that the proposed rate will not go into effect for 30 to 120 days and not until the Commission issues either a decision approving the rate increase, or issues an Accounting Order allowing the rate increase to go into effect, subject to refunds with interest, should the Commission subsequently find the rate increase to be unreasonable.

The abovementioned notice of a rate increase will satisfy Commission regulations pursuant to 207 CMR 10.02(5) and 207 CMR 6.34(1) provided the operator complies with, at a minimum, all of the items listed above in addition to the following. On the first bill which reflects a rate increase, an operator must include a statement that subscribers will not be responsible for paying a rate increase if, as a result of such increase, they choose to either terminate or downgrade their cable service within 30 days from the date payment is listed as due on the bill.[5] If the operator cannot fit this information on the bill, it may list this information on an insert to be included with the bill. A copy of the bill reflecting the rate increase or the applicable bill insert, must be sent to the Commission 30 days from the issuance date of the bill.

In addition to the Commission's 30 day written notice requirement, cable operators must cablecast a notice before implementing any rate increase once the Commission has issued a written decision.[6] Upon receipt of the Commission's decision, the cable operator must cablecast a statement that provides the old rate, the new rate, and the effective date, as well as a notice that the decision is available from the Commission and the cable operator. This statement must be cablecast at least once daily on each of eight days following the receipt by the cable operator of the Commission's decision. The eighth such cablecast shall occur no more than 14 days following the cable operator's receipt of such decision. The notice must be cablecast at times most likely to reach the maximum viewing audience. The cablecast requirement must be met before any rate increase may become effective.

In the event that the Commission issues an Accounting Order, upon receipt of the

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[3] 207 CMR 10.02(5).

[4] To meet the FCC requirement of explaining the cause of a rate change in a readily understandable fashion, cable operators should explain external cost adjustments by category (i.e., local taxes, franchise fees, cost of complying with franchise requirements and programming costs).

[5] This 30 day termination or downgrade of service provision applies regardless of whether or not the rate is put into effect as a result of the Commission issuing its decision, notification or an Accounting Order.

[6] 207 CMR 6.39(4).

such Order, the cable operator must cablecast the proposed rate increase notice pursuant to 207 CMR 6.39(4), before implementing the rate increase. In addition, the cablecast notice, as well as the first bill reflecting any proposed rate increase, should include a statement that the rate increase request is pending before the Commission and that refunds with interest, if appropriate, will be issued if the Commission subsequently finds that the rate is unreasonable.

Commission Review of Pending Rate Increase Requests

The FCC recognizes that inflation and external cost increases are outside the cable operator's control. The FCC also requires that any benefit from a reduction in these costs be passed along to subscribers. Therefore, the Commission will establish a policy for expeditiously reviewing FCC Form 1210 and FCC Form 1205 filings. This policy will benefit operators, enabling them to timely recover appropriate increases in costs. Subscribers, too, will benefit by the expedited implementation of a rate reduction when costs decrease.

Presently, however, the Commission is reviewing operators' initial rates for basic service and equipment rates while simultaneously receiving FCC Form 1210 and FCC Form 1205 rate change requests. The Commission has determined that it is inappropriate to issue decisions on the pending 1210 and 1205 filings before it has established initial rates. Due to this regulatory overlap, the Commission is seriously hindered in its ability to issue FCC Form 1210 and FCC Form 1205 rate decisions within the 120 days outlined by FCC rules. Therefore, for this period of time when the Commission is reviewing cable operators' initial rates, the Commission has determined that it will be necessary to issue Accounting Orders in response to all pending FCC Form 1210 and FCC Form 1205 rate increase filings.

While the Commission is not required to issue Accounting Orders until 120 days after the date an operator submits its FCC Form 1210 and/or its FCC Form 1205, if it determines that Accounting Orders are inevitable, the Commission will consider releasing these Orders as early as 60 days from when the operator files its Forms. However, an operator must file a written request for the issuance of an early Accounting Order. If the Commission grants the operator's request, it will issue an early Accounting Order and the operator may then implement the proposed rate change (after proper notice is given, as outlined in this Bulletin). It must, however, keep an account of all subscribers paying the rate increase. If the Commission subsequently disapproves the rate increase request, the operator will be ordered to issue refunds with interest to all affected subscribers. The Commission finds that issuing early Accounting Orders will allow operators the ability to re-coup legitimate cost increases while at the same time protect subscribers from unreasonable rates by requiring refunds, when necessary.

If you have any questions concerning this matter, please do not hesitate to call the Commission.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
COMMUNITY ANTENNA TELEVISION COMMISSION
LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202

December 30, 1994

(617) 727-6925

To All Massachusetts Cable Operators:

As you know, the Federal Communication Commission (the "FCC") recently adopted new rules regarding equipment compatibility. This letter is to advise you of the effect these new rules have on existing Massachusetts Community Antenna Television Commission (the "Commission") regulations.

The FCC's rules on equipment compatibility, released July 31, 1994, require that "cable operators shall not scramble or otherwise encrypt signals on the basic service tier. . ." unless a waiver is granted by the FCC. 47 C.F.R. § 76.630(a). Operators that previously scrambled basic services made it necessary for all subscribers to rent a converter box. Under the new federal rules, scrambling of basic is prohibited and, therefore, in the absence of a waiver of this rule by the FCC, basic only subscribers no longer may be required to rent a converter box if the television has sufficient channel capacity. For some operators, this constitutes a change in equipment policies and practices.

Commission regulation 207 CMR 10.03(3) requires that thirty (30) days prior to changing one of its policies and/or practices regarding equipment, the cable operator shall notify, in writing, the Commission, the issuing authority and all affected subscribers of this change, including a description of the changed policy and/or practice. Operators are also required under Commission regulations to include this information in their annual equipment notice. 207 CMR 10.03(2).

Affected operators that have not already done so are directed to send written notice of this change to basic only subscribers who are no longer required to rent a converter box. This information should be provided to potential subscribers before a subscription agreement is reached and should be provided in the operator's next printed annual equipment notice. In addition, the Commission reminds cable operators they must file a copy of the subscriber notice and annual equipment notice with the Commission, the issuing authority and their local office no later than March 15th of each year. 207 CMR 10.03(4).

Should you have any questions regarding this notice, please feel free to contact Frank Foss, Municipal Liaison, at the Commission.

Sincerely,

Jill M. Reddish

Jill M. Reddish
Acting Commissioner

cc: Issuing Authorities
Cable Advisory Committees

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